

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROWENA WAGNER,
Plaintiff

v. CIVIL ACTION NO. 04-264 ERIE

CRAWFORD CENTRAL SCHOOL
DISTRICT, et al.,
Defendants

STATUS CONFERENCE

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Courtroom C, U.S. Courthouse, Erie,

Pennsylvania, on Wednesday, February 8, 2006.

APPEARANCES:

CALEB L. NICHOLS, Esquire, appearing on behalf
of the Plaintiff.

MARK J. KUCHAR, Esquire, appearing on behalf of

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the proceedings began at 1:20 p.m., on
4 Wednesday, February 8, 2006, in Courtroom C.)

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6 THE COURT: This is the time I set for a status
7 conference to discuss some recent correspondence that I
8 received from both sides. The upshot apparently being, Mr.
9 Nichols, notwithstanding the fact I'm holding in my hand a
10 settlement agreement transcribed by my court reporter, that the
11 plaintiff -- it's your belief or contention that the case is
12 not settled, is that right?

13 MR. NICHOLS: That is correct, your Honor.

14 THE COURT: Would you be so kind as to come up to

15 the podium. I take it that it would be accurate for me to say

16 that the reasons that you feel the case is not settled would be

17 set forth in your correspondence to me of February 2nd, is that

18 correct?

19 MR. NICHOLS: That is correct, your Honor.

20 THE COURT: All right. Could we perhaps just take a

21 few minutes and look at some of these individual ones, we can

22 discuss them a little bit.

23 MR. NICHOLS: Sure.

24 THE COURT: Bear with me one second. The first

25 issue you raise is that, I'll read directly from your letter,

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1 "first, to be legally enforceable under Pennsylvania law, the

2 settlement agreement is required to be reduced to a writing and

3 properly signed by the parties." What authority do you have

4 for that proposition?

5 MR. NICHOLS: Statute of frauds, your Honor.

6 THE COURT: Doesn't apply. I'll refer you to

7 Standard_Steel_v._Buckeye_Energy,_Inc., 2005 WL 2403636. This

8 is Judge Conti, "oral settlement agreements are enforceable.

9 The United States Court of Appeals for the Third Circuit has
10 made clear that 'an agreement to settle a lawsuit, voluntarily
11 entered into, is binding on the parties, whether or not made in
12 the presence of the court, and even in the absence of a
13 writing'."

14 Now, in paragraph two you say, "paragraph 2 of page
15 2 of defendants' draft agreement is objectionable because it
16 seeks dismissal of the action with prejudice, a condition which
17 runs counter to the court's declaration found in the last
18 paragraph on page 3 of the transcript of the settlement
19 conference." With all respect, I don't understand that
20 proposition. But I'm going to give you an opportunity to
21 explain it to me?

22 MR. NICHOLS: As I reviewed the draft agreement
23 prepared by the school district, they added that the dismissal
24 of the complaint would be with prejudice. Now, as I
25 understand, is that once it's dismissed, then they can no

1 longer be sued upon, a protective suit cannot be initiated on

2 that?

3 THE COURT: Not the same cause of action, not for
4 this.

5 MR. NICHOLS: That's what I'm saying, as I
6 understand from the last paragraph of the transcript of the
7 settlement conference, January 12th, that makes expressly clear
8 in the event of a breach or claimed breach, that certainly the
9 complaining party can return to court.

10 THE COURT: That's correct. In fact, I made it
11 clear, I said -- this is from the settlement agreement, this is
12 from the terms that were put on the record. I said "let me
13 just add that in the event of a claimed breach of the
14 settlement agreement, the plaintiff would, of course, be
15 permitted to return to court here and sue on the settlement
16 agreement if that ever became necessary." I was specifically,
17 although, I thought technically unnecessary, preserving your
18 right to essentially bring a breach of contract claim to
19 enforce the terms of settlement. Which you specifically would
20 retain under the terms of the settlement.

21 MR. NICHOLS: The problem with that, your Honor, the
22 problem with that is that if -- you follow the proposal

23 authored by the school district, is that no reference can be

24 made to the complaint, the complaint is completely dismissed,

25 no reference made for future purposes if it's necessary to

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1 resurrect the lawsuit. You can't sue upon, as you said, you

2 return to court, plaintiff returns to court upon merely a

3 breach of contract action. And a breach of contract action,

4 the opposition can simply say then you don't belong in the

5 court, you have simply a breach of contract action. Where is

6 your discrimination complaint, it's gone.

7 THE COURT: It is gone. Let me tell you what

8 bothers me about this. I'm going to be very blunt about this.

9 I'm reading from the transcript here, sir. And this is the

10 transcript of the settlement agreement. This is after all of

11 the terms and conditions were laboriously set forth on the

12 record pursuant to my direction. I say "then are all the terms

13 and conditions acceptable?" "Mr. Nichols: They are acceptable

14 based upon my discussions with my clients, Mr. and Mrs. Wagner"

15 I say "then as far as I'm concerned, the case is settled."

16 So I am, to put it mildly, confused as to what you're doing

17 back here today.

18 MR. NICHOLS: Allow me to clarify. May I clarify?

19 THE COURT: This is your opportunity to tell me

20 anything. I do not have a petition to enforce a settlement

21 here in front of me right now. I anticipate I may get one. My

22 purpose in getting everybody together here today was to see if

23 there was some confusion, the party that was confused could be

24 disabused and we might be able to resolve this. Yes, you can

25 tell me anything you want to tell me. It sure looks like

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1 there's a settlement agreement there to me. I don't understand

2 what we're doing back here again.

3 MR. NICHOLS: I can explain, judge, please.

4 THE COURT: Go ahead.

5 MR. NICHOLS: Speaking on behalf of my client, I'm

6 here as an advocate for my client. Their understanding is that

7 no agreement, final agreement was entered into on January 12th,

8 a settlement. I advocate that now. I read the transcript, I

9 don't have a point of view on that transcript today, I'm not a

10 witness here, I'm an advocate. Their position, I have to

11 advocate that today, was this. The reason I reached that
12 conclusion is this. This is one from the outset when we
13 presented a demand letter to the school district, a copy of
14 which I have provided to the court. We made it explicitly
15 clear that these are the parameters within which we were
16 willing to discuss and to entertain some kind of discussion
17 regarding hopefully that would lead to settlement. One of
18 those was that, it would be these provisions. The provision
19 dealing with that any agreement must be consummated under the
20 auspices of the court. That it must be in terms of a consent
21 decree. The other provisions that are set forth there, none of
22 those are objectionable to the school district. But yet
23 they're very much a part, set down in writing and have been
24 part of these negotiations.

25 THE COURT: I'll tell you what I'm going to do --

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1 MR. NICHOLS: That's all I'm saying.

2 THE COURT: I hear what you're saying. I'm going to
3 hear briefly from Mr. Kuhar. But in order to tee this up
4 appropriately, I have no motion in front of me now, a petition

5 to enforce the settlement. When a dispute arises between the
6 parties under Pennsylvania law as to whether there was or was
7 not a settlement, it is appropriate under the cases I've
8 reviewed, including the case I just cited from the western
9 district, for the judge, if necessary, to conduct an
10 evidentiary hearing and then make findings of fact and
11 conclusions of law. And, frankly, upon an appropriate
12 petition, that is what I would intend to do. To determine
13 whether or not there was in fact a settlement. Now, I want to
14 hear from Mr. Kuhar, then I'll let you have the last word.

15 MR. NICHOLS: Okay.

16 THE COURT: What do you want to tell me, Mr. Kuhar?

17 MR. KUHAR: Your Honor, we have no doubt that there
18 was a settlement, either. We are as confused, to put it
19 mildly, as anyone. We think that our agreement contains only
20 the terms that were listed and approved during the conference,
21 plus some boilerplate, which has now been objected to. And,
22 essentially, we don't know the cause, why there was issues
23 between the plaintiff and her counsel, I have no idea what the
24 cause is, no one has told me. But we have a binding settlement
25 agreement, we want nothing more, nothing less than what was in

1 the settlement agreement. The only other issue I would
2 address, unless prompted through a question, would be this idea
3 that it was somehow made known to us that any settlement would
4 have a consent decree. These are all apparent, number one, it
5 was not part of the discussions, let alone part of the
6 settlement that was actually reduced to the record. Number
7 two, the only time a consent decree was ever mentioned to any
8 of my defendants was through this letter, which Mr. Nichols
9 mentioned. It was his December 29th letter, in which he said
10 he wanted a consent decree, back pay, calculated to several
11 hundred thousand dollars, attorney's fees, uncapped,
12 unspecified. He did send a demand letter in which he mentioned
13 a consent order, along with a number of other things, which
14 totally fell off the table in the settlement discussions and in
15 the settlement itself. If the court would accept an oral
16 petition to enforce, I would certainly make one.

17 THE COURT: No, I won't accept an oral petition.
18 You can make one, it's not that I won't accept it. But if you
19 want to file a petition to enforce the settlement, you file a
20 petition to enforce the settlement setting forth the

21 appropriate legal authority and standard. And then when I get
22 that, I will give him an opportunity to respond, then I'll set
23 it down for a hearing. Now, I have one or two other questions,
24 unless you have anything else?

25 MR. KUHAR: Just to clarify, in my last letter to

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1 Mr. Nichols, I invited some meaningful dialogue, which hasn't
2 happened prior to today. If there is an impediment to
3 settlement and I need to file a petition to enforce, let me
4 know and I'll go ahead and do that. In the absence of any
5 confirmation.

6 THE COURT: It seems to me since we're here, there's
7 an impediment.

8 MR. KUHAR: It's very clear to me now, your Honor,
9 thank you.

10 THE COURT: Mr. Nichols, just one or two other
11 questions, then I'll get some timeframes here for everybody.
12 When you told me on the record that you had reviewed the terms
13 with your clients and they were acceptable "based upon my
14 discussions with your clients," was that an accurate statement

15 at the time you made it to me?

16 MR. NICHOLS: It was in the context --

17 THE COURT: Was it an accurate statement at the time
18 that you made it to me?

19 MR. NICHOLS: To answer you, your Honor, as to the
20 context --

21 THE COURT: Sir, I want you to listen to my question
22 very carefully. You represented to me at the settlement
23 conference that you had discussed the terms with your clients
24 and they had indicated their acceptance. I don't want to hear
25 context?

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1 MR. NICHOLS: I cannot represent to you that is
2 accurate because my clients said that that was not their
3 understanding and, therefore, I was not authorized to
4 represent, make that representation to you.

5 THE COURT: What's going on here, and this isn't the
6 day to take testimony, but understand what's coming down the
7 road. Your clients dispute whether or not the deal you made
8 for them was a deal that they wanted --

9 MR. NICHOLS: I wouldn't put it that way.

10 THE COURT: Excuse me, wait until I'm done talking
11 to you.

12 MR. NICHOLS: I'm sorry, judge.

13 THE COURT: I want you to tell me what the nature of
14 the problem is with your clients, so I have some advanced
15 knowledge or notice as to what we're going to be doing at this
16 evidentiary hearing?

17 MR. NICHOLS: My clients were not present when the
18 transcript of the settlement conference on January 12th was
19 transcribed, they had gone.

20 THE COURT: Your clients were here and your clients
21 agreed in my chambers to the material terms and conditions, did
22 they not?

23 MR. NICHOLS: They tell me they did not. I'm their
24 advocate. I can't be a witness, I'm certainly not going to be
25 a witness against my clients. That's improper.

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1 THE COURT: I'll tell you what I'm going to do. Mr.
2 Kuhar, you've got 20 days to file a petition and supporting

3 brief on this. Mr. Nichols, you have 15 days within which to
4 respond to that. Once I get both briefs in, a petition to
5 enforce and, presumably, what I would anticipate would be a
6 brief in opposition or the functional equivalent, then my
7 deputy clerk will set this down for a hearing. At which point,
8 the way things are shaking out, it's clear to me we're going to
9 have to take some testimony. In preparing any brief on this, I
10 want attention paid to the doctrine of expressed authority
11 under Pennsylvania law. It appears, at least to me, that a
12 lawyer cannot necessarily bind his client by apparent
13 authority, there has to be expressed authority. So I may have
14 to get into that whole issue. Which, of course, I will do if
15 it becomes legally appropriate. I also remind you hanging over
16 this, I also remind you and I'm not suggesting this would come
17 to pass, but it's true for every legal dispute, that Rule 11
18 hangs over every legal dispute. And if a position is unfounded
19 or if it's frivolous and the court finds it's frivolous, the
20 potential for Rule 11 sanctions is always there. Do you
21 understand that?

22 MR. NICHOLS: I understand that, judge.

23 THE COURT: All right, we're adjourned.

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25 (Whereupon, at 1:35 p.m., the proceedings were

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1 concluded.)

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7 C E R T I F I C A T E

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10 I, Ronald J. Bench, certify that the foregoing is a

11 correct transcript from the record of proceedings in the

12 above-entitled matter.

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18 Ronald J. Bench

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